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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

PR Docket No. 93-133

Amendment of Part 80 of the
Commission's Rules Concerning
the General Exemption for Large
Oceangoing Cargo Vessels and
Small Passenger Vessels

NOTICE OF PROPOSED RULE MAKING

Adopted: May 3, 1993;

Released: May 12, 1993

Comments Due: July 6, 1993

Reply Comments Due: July 21, 1993

By the Commission:

I. INTRODUCTION

1. This Notice of Proposed Rule Making (Notice) proposes to revise and update the requirements of the two general exemptions from the radiotelegraph equipment requirements of the Communications Act of 1934 (Communications Act),¹ described in Part 80 of the Commission's Rules, 47 C.F.R. Part 80, for large oceangoing cargo vessels² and small passenger vessels.³

II. BACKGROUND

2. The Communications Act specifies that all passenger vessels and large oceangoing cargo vessels must carry a radiotelegraph (manual Morse code) station.⁴ Section 352(b) of the Communications Act, 47 U.S.C. § 352(b), however, provides the Commission with the authority to,

among other things, exempt a ship or class of ships from the requirement to carry manual Morse code radiotelegraph equipment under certain conditions.⁵ To reduce the regulatory burden, the Commission adopted rules specifying certain conditions for cargo vessels⁶ and passenger ships⁷ which, if complied with, would not require filing a specific vessel-by-vessel exemption request. The Commission's Rules currently contain "general exemptions" that cover, among other things, large oceangoing cargo vessels operating on domestic voyages along the coasts of the 48 contiguous states, not more than 150 nautical miles from the nearest land⁸ as well as small passenger vessels operating on certain domestic voyages.⁹

III. DISCUSSION

3. Since the general exemption Rules were adopted, several of their substantive provisions have become outdated or unnecessary because of advancements in technology¹⁰ or expanded routes of service.¹¹ In addition, the Commission has received several inquiries¹² seeking clarification of the terms of the large cargo vessel general exemption.¹³ As a result, we believe it is appropriate to propose changes to the existing general exemption for large cargo vessels and the general exemption for certain small passenger vessels.

A. General Exemption for Large Cargo Vessels

4. First, we believe that the current geographical limitation on the applicability of the present general exemption to voyages along the coasts of the 48 contiguous states is unnecessarily restrictive. Section 352(b) of the Communications Act permits the Commission to exempt vessels from the radiotelegraph requirements based on, among other things, the route of the voyage. The majority of individual exemption requests we receive concern operations between California and Alaska or between California and the Gulf of Mexico by way of the Panama Canal. Because such vessels are operated on voyages that are extensions of routes along the 48 contiguous states, are equipped with radio systems that provide multiple pathways for distress and safety communications, and do not

¹ 47 U.S.C. §§ 351-364.

² Cargo vessels 1,600 gross tons and over. See 47 U.S.C. § 351(a)(1)(B).

³ Passenger vessels less than 100 gross tons. See 47 U.S.C. § 352(b)(3).

⁴ 47 U.S.C. § 351(a)(1).

⁵ See 47 U.S.C. §§ 352(b)(1)-(3).

⁶ For example, large cargo vessels must be equipped with satellite equipment and a radiotelephone capable of sending and receiving both data and voice. See 47 C.F.R. § 80.836(c).

⁷ Small passenger vessels must be equipped with two independent means of communication for voyages beyond 100 nautical miles from land. See *Report and Order* PR Docket No. 90-134, 6 FCC Rcd 1969 (1991); *Memorandum Opinion and Order*, PR Docket No. 90-134, 7 FCC Rcd 4582 (1992).

⁸ See *Report & Order*, PR Docket No. 79-336, 47 Fed. Reg. 10220 (1982).

⁹ Small passenger vessels generally do not have room to carry a manual Morse code radiotelegraph installation. The Commission recognized this in an *Order* dated May 8, 1957 (F.C.C. 54-477), which first adopted a general exemption for small passenger

vessels. See 47 C.F.R. §§ 80.836(a) and 80.933(b).

¹⁰ For example, the Commission adopted rules to implement the Global Maritime Distress and Safety System (GMDSS). See *Report and Order*, PR Docket No. 90-480, 7 FCC Rcd 951 (1992). The GMDSS, the result of over a decade of work by the world's maritime nations, is an automated ship-to-shore distress alerting system that relies on satellite and advanced terrestrial systems. The GMDSS will be phased in during the 1992-1999 time period.

¹¹ Frequently, exemption requests concern voyages between the Gulf of Mexico and California via the Panama Canal as well as between California and Alaska.

¹² See, e.g., letters from Mr. David Shoemaker, Del Mar Electronics, to Mr. Marc S. Martin, Aviation and Marine Branch, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. (August 21, 1992), from Mr. Richard H. Garrett, Mackay Communications, to Mr. George R. Dillon, Enforcement Division, Field Operations Bureau, Federal Communications Commission, Washington, D.C. (January 22, 1988).

¹³ See 47 C.F.R. § 80.836(c).

operate more than 150 nautical miles from land¹⁴ the Commission generally grants such individual exemption requests provided the cargo vessels conform to the conditions specified in the general exemption contained in Section 80.836(c). In this context, the exemption application requirement is an unnecessary burden on both the public and the Commission. Therefore, we propose amending the large cargo vessel general exemption by broadening its applicability to domestic voyages through the Panama Canal Zone, to Alaska, to Puerto Rico, and along the coasts of the 48 contiguous states, not more than 150 nautical miles from the nearest land.¹⁵ Additionally, to reflect recent technological advances in emergency position-indicating radio beacons (EPIRBs), we are proposing to add a condition to the general exemption that vessels carry a satellite EPIRB.¹⁶

5. Second, there have been numerous improvements in technology since the general exemption rules were adopted. Specifically, the Commission recently adopted rules implementing GMDSS.¹⁷ The Commission determined that GMDSS offered significant advantages over the current marine manual Morse code radiotelegraph capabilities. Therefore, we propose to add GMDSS equipment to the list of acceptable communications alternatives specified under the general exemption.¹⁸ This will update the exemption rules and allow GMDSS equipped vessels to qualify for the general exemption without having to purchase unnecessary equipment.

6. Further, we propose to make several editorial changes to this general exemption in the interest of greater clarity and simplicity. We seek comment on the proposed changes to the large cargo vessel exemption provisions.

B. General Exemption for Small Passenger Vessels

7. Each year, we receive a large number of requests for exemption from the manual Morse code radiotelegraph equipment requirements of the Communications Act to permit the operation of small passenger vessels on short international voyages.¹⁹ In the vast majority of such cases, these vessels are equipped with marine radio equipment capable of sending and receiving voice communications which complies with Subpart S of Part 80 of the Commission's Rules, 47 C.F.R. Part 80, Subpart S, and operate within VHF range of Coast Guard or public coast stations, not more than 20 nautical miles from the nearest land or,

alternatively, on voyages not more than 200 nautical miles between two consecutive ports. Therefore, the voyages of such vessels would be in compliance with the conditions set forth in the general exemption from the radiotelegraph equipment requirement of the Commission's Rules,²⁰ but for the fact that the vessels make port at nearby foreign destinations.²¹

8. Vessel operators not complying with the domestic route requirement of the general exemption must request an individual exemption from both the International Convention for the Safety of Life at Sea, 1974, as amended (Safety Convention)²² and the Communications Act. The specific exemption process requires a vessel operator to submit to the Commission an exemption application as well as two separate fees in order to obtain a one year exemption from the Commission.²³ These vessel operators are typically small family businesses which transport tourists on short voyages. Under such circumstances, the individual exemption application process and its concomitant fees constitute an unnecessary burden on this sector of the maritime community.²⁴ In addition, the Commission incurs the administrative burden of processing fees, evaluating applications and issuing exemption letters and Safety Convention Exemption Certificates to the applicants in a timely manner.²⁵

9. Because such short international voyages involve virtually identical routes and conditions as those authorized by the general exemption, they do not present safety concerns greater than the domestic voyages authorized by the current general exemption. Therefore, the Commission normally grants such exemption requests. Under these circumstances, we propose broadening the current general exemption for small passenger vessels contained in Section 80.933(b) to include certain short international voyages in the regions from which we most frequently receive such individual exemption requests (the waters contiguous to the coasts of Southern California and Baja California, Mexico, the Pacific Northwest and the Caribbean Sea) subject to the same conditions contained in the current general exemption. We request specific comment on whether other areas should be added or whether greater distances from land should be included for vessels equipped with a medium frequency radiotelephone equipment. In addition to this substantive change, we also propose a minor editorial clarification of the current general exemption for small pas-

¹⁴ Section 352(b)(2) of the Communications Act limits the Commission's authority to exempt U.S. cargo vessels from the radio station requirements to voyages within 150 nautical miles from the nearest land, irrespective of whether such vessels operate on international or domestic voyages. It is generally recognized in the maritime community that 150 nautical miles is the average distance that medium frequency radio can cover (high frequency radio and satellite communications are worldwide).

¹⁵ It is the view of the U.S. Coast Guard that these voyages are domestic voyages.

¹⁶ See 47 C.F.R. § 80.1061.

¹⁷ See note 10, *supra*.

¹⁸ See 47 C.F.R. § 80.836(c).

¹⁹ The general exemption from the radiotelegraph requirements of the Communications Act contained in Section 80.836(a) of the Commission's Rules, 47 C.F.R. § 80.836(a) for small passenger vessels only applies to such vessels operated on domestic voyages.

²⁰ See 47 C.F.R. §§ 80.905 and 80.933(b).

²¹ For example, a vessel operating in the Caribbean Sea may make international voyages that are less than a mile when traveling between the U.S. Virgin Islands and the British Virgin Islands.

²² 32 U.S.T. 47, T.I.A.S. 9700. The Safety Convention specifies, among other things, the radio communications carriage requirements for vessels carrying more than 12 passengers on international voyages.

²³ Because exemption applications currently have a fee of \$105, an applicant for an exemption from the radio communications requirements of both the Communications Act and the Safety Convention must pay a total fee of \$210.

²⁴ See letter from Ronald A. Hale, President, Heritage Boats, Inc., St. Thomas, U.S.V.I. to Acting Chief, Aviation and Marine Branch, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. (July 11, 1991).

²⁵ Applicants frequently submit their exemption applications to the Commission only one to three weeks prior to the time they plan to commence their marine operations.

senger vessels operated on domestic voyages to specify the applicable Sections of the Commission's Rules and to group it with similar exemptions.²⁶

IV. CONCLUSION

10. By this action, we propose to amend the Commission's Rules to broaden, update and clarify general exemptions from the radiotelegraph equipment requirements of the Communications Act for large cargo and small passenger vessels. By updating the general exemptions, the proposed changes would eliminate unnecessary regulatory burdens on several sectors of the maritime community.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

11. An Initial Regulatory Flexibility Analysis is contained in Appendix A.

V. PROCEDURAL MATTERS

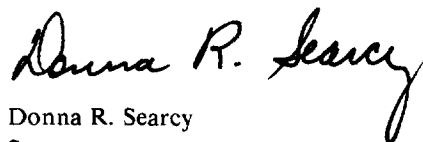
12. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.206(a).

13. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before **July 6, 1993**, and reply comments on or before **July 21, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

14. Authority for issuance of this *Notice* is contained in Sections 4(i), 303(r), 352(b)(2), and 352(b)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 303(r), 352(b)(2) and 352(b)(3).

15. For further information regarding this *Notice*, contact Marc S. Martin, Private Radio Bureau, Aviation and Marine Branch, (202) 632-7175.

FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy
Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this *Notice*. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 13, *supra*. The Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1981).

A. Reason for Action

2. The Commission proposes to broaden, revise and update the current general exemptions for certain vessels operating on specific voyages in order to eliminate a substantial burden on the public, reduce administrative costs and to improve government efficiency.

B. Objectives

3. We seek to reexamine the requirements of the general exemptions for certain vessels in order to reduce unnecessary burdens on the industry and administrative costs to the Commission and thereby increase efficiency in the marine radio service and within the Commission.

C. Legal Basis

4. The proposed action is authorized under Sections 4(i), 303(r), 352(b)(2) and (3) of the Communications Act, 47 U.S.C. §§ 154(i), 303(r), 352(b)(2) and (3).

D. Reporting, Recordkeeping and Other Compliance Requirements

5. Ship owners and operators of several classes of vessels operating on certain voyages, subject to certain conditions, will no longer be required to apply for a specific exemption from the Commission.

E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules

6. None.

F. Description, Potential Impact, and Small Entities Involved

7. The proposals would broaden, revise and update the general exemptions for several classes of vessels, which would eliminate unnecessary regulatory burdens such as the requirement to apply for specific exemptions. Further, these proposals would significantly reduce the time and expense required by the Commission to process and evaluate applications of the various classes of vessels involved. Specifically, adopting the proposed changes to the small passenger general exemption should return approximately

²⁶ See proposed changes to 47 C.F.R. § 80.933(c) in Appendix

\$40,000 to the economy and reduce approximately 1,300 burden hours on the Commission by eliminating the need for exemptions in certain circumstances.²⁷ Because cargo vessels 1,600 gross tons and over are not typically owned by small businesses, only the changes to the general exemption for small passenger vessels are likely to concern small businesses.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

8. None.

APPENDIX B

Proposed Rules

Title 47 of the Code of Federal Regulations, Part 80, is proposed to be amended as follows:

Part 80 - Stations in the maritime services

1. The authority citation for Part 80 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1968, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. In Section 80.836, the section heading is revised, paragraph (a) is removed, paragraphs (b), (c) and (d) are redesignated as (a), (b) and (c), respectively, and newly designated paragraph (b) is revised to read as follows:

§ 80.836 General cargo vessel exemptions.

* * * * *

(b) Cargo ships of 1600 gross tons and upward are exempt from the radiotelegraph requirements of Part II of Title III of the Communications Act, if the following criteria are met:

(1) The ship operates on domestic voyages only. For purposes of this paragraph, the term domestic voyages includes ports in Alaska, Puerto Rico, along the coasts of the 48 contiguous states and routes through the Panama Canal Zone, so long as the vessel does not make port at a foreign destination;

(2) The routes of the voyage are never more than 150 nautical miles from the nearest land;

(3) The ship complies fully with the requirements for the Global Maritime Distress & Safety System (GMDSS) contained in Subpart W of this part; or

(4) The ship complies fully with all of the following conditions. The ship must:

(i) Be equipped with a satellite ship earth station providing both voice and telex;

(ii) Be equipped with a VHF and MF radiotelephone installation which complies fully with Subpart R of this part and have the capability of operating on the HF frequencies listed in Section 80.369(b) for distress and safety communications (this capability may be added to the MF radiotelephone installation);

(iii) Be equipped with a narrow-band direct-printing radiotelegraph system with SITOR meeting the requirements of Section 80.219;

(iv) Be equipped with at least two VHF transceivers capable of being powered by the reserve power supply (one of the VHF transceivers may be the VHF required by paragraph (b)(4)(ii) of this paragraph);

(v) Be equipped with a Category 1, 406.025 MHz EPIRB meeting the requirements of Section 80.1061;

(vi) In addition to the main power source, be equipped with an emergency power source which complies with all applicable rules and regulations of the U.S. Coast Guard (the satellite earth station, the narrow-band direct-printing equipment and the 500 kHz autoalarm receiver must be capable of being powered by the main and emergency power sources);

(vii) Be equipped with a 500 kHz autoalarm receiver and a means of recording or decoding any distress signal received for relay to the Coast Guard or a public coast station;

(viii) Participate in the AMVER system when on voyages of more than twenty-four hours and have the capability of operating on at least four of the AMVER HF duplex channels;

(ix) Carry at least one licensed operator to operate and maintain all of the ship's distress and safety radio communications equipment in accordance with Sections 80.159(c) and 80.169; and

(x) Maintain a continuous watch on 2182 kHz and 156.8 MHz when navigated.

* * * * *

3. In Section 80.933, the section heading is revised, paragraphs (a), (b) and (c) are redesignated as (b), (c) and (d), a new paragraph (a) is added and newly designated paragraph (c) is revised to read as follows:

§ 80.933 General small passenger vessel exemptions.

(a) All U.S. passenger vessels of less than 100 gross tons, not subject to the radio provisions of the Safety Convention, are exempt from the radiotelegraph provisions of Part II of Title III of the Communications Act, provided that the vessels are equipped with a radiotelephone installation fully complying with Subpart S of this part.

* * * * *

(c) Subject U.S. vessels less than 100 gross tons which are equipped with VHF installations meeting the requirements of this subpart are exempt from the radiotelegraph requirements of Part II of Title III of the Communications Act

²⁷ See discussion of the burden and fees associated with exemption applications in paragraph 8 of the Notice. We estimate that each exemption application requires eight staff hours to process and evaluate. Further, we estimate receipt of approximately 160

exemption applications each year for small passenger vessels operated on the voyages that the proposed general exemption would cover.

and the medium frequency radiotelephone requirements of this subpart as well as Regulations 7 to 11 of Chapter IV of the Safety Convention on the condition that the vessels remain within the effective coverage area of U.S. Coast Guard or public coast stations operating in the band 156-162 MHz, not more than 20 nautical miles from the nearest land or, alternatively, not more than 200 nautical miles between two consecutive ports, when the vessels are navigated on the following domestic and international voyages:

(1) In waters contiguous to Hawaii and the islands in the Caribbean Sea;

(2) In waters contiguous to the coast of Southern California from Point Conception south to Cape San Lucas, Mexico; the Islands of San Miguel, Santa Rosa, Santa Cruz, Anacapa, San Nicolas, Santa Barbara, Santa Catalina, and San Clemente are considered to be within these waters; or

(3) In waters contiguous to the coast of the Pacific Northwest from Seattle, Washington north to Vancouver Island, Canada.

* * * * *